IN THE

Supreme Court of the United States

October Term, 1964

No. 528

GEORGETOWN GALLERIES, INC., AND HUNTINGTON CHAIR CORPORATION,

Bankrupts,

THOMAS J. WILSON, AS TRUSTEE IN BANKRUPTCY OF GEORGETOWN GALLERIES, INC., AND HUNTINGTON CHAIR CORPORATION,

Appellees,

v.

HY-LAN FURNITURE COMPANY, INC.,

Appellant.

PETITION FOR RE-HEARING OF APPELLANT'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

To: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, the Appellant above named presents this, its Petition for Re-hearing of Appellant's petition for a Writ of Certiorari in the above-entitled cause and urges this Court, for the following compelling reasons to grant a Writ

of Certiorari in this case, said original petition being denied on December 14, 1964.

POINT I

To allow this case to stand will hopelessly confuse the rights of all persons whose relationship with a bankrupt first commences after the filing by the debtor of a petition for Chapter XI arrangement and prior to the entry of an order that bankruptcy be proceeded with. It would reverse that rule of Bankruptcy law that states that a creditor whose claim first arises after the filing of a petition for a Chapter XI arrangement cannot prove his claim during the pendency of that Chapter XI administration. *Section 381 Bankruptcy Act; Vol. 9, Colliers Section 10.19,* pgs. 539-547.

Appellant first entered into business relations with the Appellee-bankrupt after the filing by Appellee of its petition for a Chapter XI arrangement. Therefore, Appellant had a right to file its proof of claim as a creditor of the Appellee within a period of six months from February 14, 1963, the date Appellee was adjudicated a bankrupt. This statutory period could not be shortened by the Referee in Bankruptcy.

POINT II

The Referee in Bankruptcy did not have summary jurisdiction to adjudicate the claim of the bankrupt against the Appellant on April 23, 1963, and therefore, he did not have the right to enter an affirmative judgment. Bankruptcy is a statutory proceeding and these statutes must be strictly construed.

Referee Sample had no jurisdiction to enter a Show Cause Order based on the petition of the Trustee in Bankruptcy filed on April 12, 1963, as Appellant, not having filed a Proof

of Claim on or prior to that date, was not a party to the bankruptcy proceedings and therefor was not subject to the summary jurisdiction, at that time, of Referee Sample. This is uncontradicted basic bankruptcy law.

It is most significant to understand that the Trustee in Bankruptcy created this entire situation by petitioning the Referee to reject and disallow a claim on which no Proof of Claim had been filed and also to require someone not a party to the bankruptcy proceeding to pay an alleged amount due the bankrupt. The Referee is given no such power in the Bankruptcy Act and it was this action of the Trustee that brought about the injustices now complained of.

POINT III

It is extremely noteworthy that not one single legal precedent was cited by the Appellee in his brief in opposition to Appellant's Petition for a Writ of Certiorari to refute those legal principles, cases and authorities relied on by the Appellant. Therefore, to allow this case to stand would create a case contrary to those guide posts now relied on by practitioners of bankruptcy law. The legal morass of bankruptcy procedure has attracted such national concern that the United States Congress had delegated to this Honorable Court the arduous task of clearing away the thickets of bankruptcy procedural rules by creating rules of procedure to be followed in all bankruptcy proceedings. Thus, it is in the national interest for this case to be considered and corrected by this court.

POINT IV

A Bankruptcy Court is fundamentally a court of equity. The Appellant should not be deprived of its property with-

out being allowed to assert its position in a controversy where there is no statutory basis of jurisdiction over it at the time the judgment was rendered.

The Appellant should not be placed in the position of having to obey a summary turnover order and then to litigate his own rights and claims against the same party at a later date.

CONCLUSION

The Appellant therefor prays that a re-hearing be allowed in this case and further prays that on such re-hearing that the Appellant's petition for a Writ of Certiorari be granted; and further prays that this Court reverse the decree from which relief is being sought on the grounds that it is without legal foundation or in the alternative, remand this cause to the United States District Court for the Western District of North Carolina with appropriate instructions as to further proceedings in that Court making due allowance for the presentation of Appellant's claim under proof that it can adduce in support of its Proof of Claim duly and timely filed on June 14, 1963.

Respectfully submitted,

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CERTIFICATE OF MAILING

Copy of the foregoing Petition for Writ of Certiorari was served on the Appellee by mailing the same, air mail postage-prepaid, to Thomas J. Wilson, Lincolnton, North Carolina and W. F. Womble, Wachovia Bank Building, Winston-Salem, North Carolina, Appellee's counsel of record, all on the 30th day of December, 1964.

ROBERT CANTOR
ROBERT R. JONES

CERTIFICATE OF COUNSEL

We, Robert Cantor and Robert R. Jones, Counsel for Petitioner, Hy-Lan Furniture Company, Inc., Appellant, do hereby certify that the foregoing Petition for Re-hearing of Appellant's Petition for Writ of Certiorari has been filed with the Court in good faith and not for purposes of delay.

ROBERT CANTOR
ROBERT R. JONES